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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,603	10/29/2003	Ahmad Akashe	77024	6852

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/696,603	AKASHE ET AL.	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Jennings or Ishizuka et al taken together with Goodnight, Jr. et al.

Jennings and Ishizuka et al disclose meat analogues containing soy protein material (e.g. Abstracts of each). The claims differ in that same further call for a soy protein that is prepared by a method such that the soy protein is deflavored. Goodnight, Jr. et al teaches a soy protein material as called for in the instant claims (due to the similarity in processing of same). More specifically, the soy protein material of Goodnight, Jr. et al is prepared by pH a slurry of soybean, passing same through an ultrafiltration membrane which is expected to be polymeric, having a cutoff and employing processing temperature as claimed. The soy protein created therein is expected to be deflavored taking into account the similarity in processing between the instant invention ad that of Goodnight, Jr. et al (see cols. 2-4; examples). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed this particular treated soy protein in the meat analogues because of the improved functionality and nutritional qualities of the treated soy protein (e.g. Abstract).

The claims further call for the amount of soy protein in the meat analogue. However, determination of same would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at same as a matter of preference depending on the particular amount of soy protein needed/desired in the product, availability of same, cost, etc.

3. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Jennings or Ishizuka et al taken together with Goodnight, Jr. et al, Hayhurst et al, and Komatsu et al.

The claims further call for said meat analogue being a ham and cheese loaf. Ham and cheese loafs are notoriously well known as taught, for example, by Hayhurst et al (Example 2). In addition, it is well known to employ soybean in ham analogues as taught, for example, by Komatsu et al (col.1, lines 49-63). It would have been obvious to one having ordinary skill in the art at the time of the invention to have prepared the meat analogue of Jennings and Ishizuka et al in the form of a ham and cheese loaf as a matter of preference depending on the particular meat analogue desired.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over either one of claims 22 and 23 of copending Application No. 11/209105 or claims 24-30 of copending Application No. 10/697402 in view of Goodnight, Jr. et al and either one of Jennings or Ishizuka et al.

The claims differ from the claims of copending Applications No. 11/209105 and 10/697402 in that the whey protein is soy milk protein material and that said soy protein is employed in a meat analogue. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed a soy protein source as the whey source which is to be deflavored as taught, for example, by Goodnight, Jr. et al as a matter of preference depending on, for example, availability of the protein source, the cost of same, etc. It is well known to employ soybean protein in meat analogues as taught, for example, by either one of Jennings or Ishizuka et al. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the protein of the claims of 11/209105 or 10/697402 in meat analogues as a matter of preference.

The claims further call for the amount of soy protein in the meat analogue. However, determination of same would have been well within the purview of a skilled

artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at same as a matter of preference depending on the particular amount of soy protein needed/desired in the product, availability of same, cost, etc.

This is a provisional obviousness-type double patenting rejection.

6. Claims 11 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims and references as set forth in paragraph 6 above and further in view of Hayhurst et al, and Komatsu et al.

The claims further call for said meat analogue being a ham and cheese loaf. Ham and cheese loafs are notoriously well known as taught, for example, by Hayhurst et al (Example 2). In addition, it is well known to employ soybean in ham analogues as taught, for example, by Komatsu et al (col.1, lines 49-63). It would have been obvious to one having ordinary skill in the art at the time of the invention to have prepared the meat analogue in the form of a ham and cheese loaf as a matter of preference depending on the particular meat analogue desired.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

7. Applicant's arguments filed 4/28/06 have been fully considered but they are not persuasive.

Applicant's declaration and arguments have been carefully considered. Although the attempt to support Example 1 of Goodnight as being close enough to Comparative Process 1 of Example 14 in US 2004/0161525 (wherein said Example 14 compares

product attributes of the instant invention) is appreciated, it is not persuasive in view of the following reservations. Applicant has addressed at least 5 processing variables which are significantly different between Example 1 of Goodnight and Comparative Process 1 of Example 14 in US 2005/0161525. It is difficult on its face to imagine that both processes would provide products which necessarily have the same characteristics. Although attempts are made to explain away the differences of each variable as insignificant to the final product characteristics, no supporting evidence by way of literature or experiments is provided. Nevertheless, even if such difference in each variable taken alone is demonstrated to not effect essentially the product outcome from that used in Comparative Process 1 and Goodnight, Jr. et al Example 1, the *combination* of differing variables does not appear to have been addressed. More specifically, a combination of said processing variables interacting with one another (e.g. significantly different soy form, moisture content, pH) are employed in each process, and it is not clear or has not been demonstrated that the use of such significantly differing combination of variables would provide the same product for the purpose of comparing same with the instant invention. In addition, there is no comparison in any of the characteristics of the product of Goodnight, Jr. et al Example 1 and that of Comparative Process 1 to support that the same product is produced. Additionally, there are other variables that have not been accounted for that could possibly effect the processing outcome. For example, in addition to differing sodium hydroxide solutions, Goodnight, Jr. et al adds the sodium hydroxide solution with agitation while the solution is added slowly in the Comparative Process 1 with no

indication of any step of mixing or agitation. The extraction in the Goodnight, Jr. et al example is carried out for a longer period and presumably a much higher temperature (55 C) than that in Comparative Process 1 which would appear to provide an extract having a different composition. The pH in the Comparative Process 1 is reduced from 9 to 7.5 after centrifuging whereas no such direct manipulation is employed in Goodnight, Jr. et al. Also, the protein retentate product of Comparative Process 1 is pH adjusted with the addition of citric acid, clearly adding an element to the product that does not exist in the Goodnight, Jr. et al. Goodnight, Jr. et al differs ends processing with no pH adjustment and a steam treatment of 138 C, contrary to the Comparative Example 1 wherein it would appear that the product of Goodnight, Jr. et al may exhibit denaturation not resulting from Comparative Example 1. With such difficulty in deciphering the comparison of the comparison product, it would appear that a more productive route of comparison would be to conduct direct comparison experiments between the product/process of Goodnight, Jr. et al and that of the instant invention.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

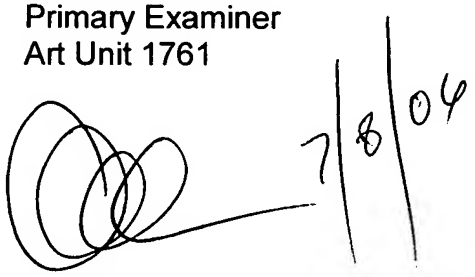
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
July 8, 2006